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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 CLINT D. CHOICE,) No. CV 11-03847-JFW (VBK)
12)
13) Petitioner,) ORDER ACCEPTING FINDINGS AND
14) v.) RECOMMENDATIONS OF UNITED STATES
15) FRANK X. CHAVEZ,) MAGISTRATE JUDGE
16) Respondent.)
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17 Pursuant to 28 U.S.C. §636, the Court has reviewed the Petition
18 for Writ of Habeas Corpus ("Petition"), the records and files herein,
19 and the Report and Recommendation of the United States Magistrate
20 Judge ("Report").
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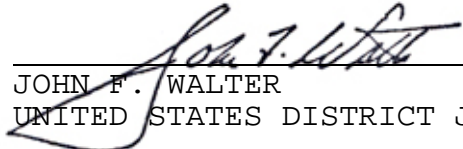
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1 **IT IS ORDERED** that: (1) the Court accepts the Findings and
 2 Recommendations of the Magistrate Judge, and (2) the Court declines to
 3 issue a Certificate of Appealability ("COA").¹

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 5 DATED: June 20, 2012


 6 JOHN F. WALTER
 7 UNITED STATES DISTRICT JUDGE
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 15 ¹ Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability
 16 may issue "only if the applicant has made a substantial showing of the
 17 denial of a constitutional right." Here, the Court has adopted the
 18 Magistrate Judge's finding and conclusion that Petitioner failed to
 19 diligently prosecute this action and that the Petition is not fully
 20 exhausted. Thus, the Court's determination of whether a Certificate
 21 of Appealability should issue here is governed by the Supreme Court's
 22 decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000),
 23 where the Supreme Court held that, "[w]hen the district court denies
 24 a habeas petition on procedural grounds without reaching the
 25 prisoner's underlying constitutional claim, a COA should issue when
 26 the prisoner shows, at least, that jurists of reason would find it
 27 debatable whether the petition states a valid claim of the denial of
 28 a constitutional right and that jurists of reason would find it
 debatable whether the district court was correct in its procedural
 ruling." 529 U.S. at 484. As the Supreme Court further explained:

"Section 2253 mandates that both showings be made before the
 court of appeals may entertain the appeal. Each component
 of the § 2253(c) showing is part of a threshold inquiry, and
 a court may find that it can dispose of the application in
 a fair and prompt manner if it proceeds first to resolve the
 issue whose answer is more apparent from the record and
 arguments." Id. at 485.

Here, the Court finds that Petitioner has failed to make the
 requisite showing that "jurists of reason would find it debatable
 whether the district court was correct in its procedural ruling."